

LEGAL STATUS AND CONSEQUENCES OF UNILATERAL DIVORCE: COMPARATIVE STUDIES BETWEEN EGYPT, JORDAN, TUNISIA AND INDONESIA

^{i,*}Muhammad Nasir, ⁱⁱYuni Roslaili, ⁱⁱⁱSuparwany, ^{iv}Rita Khathir, ^vAisyah Idris & ^{vi}M. Anzaikhan

ⁱFaculty of Sharia, The State Islamic University of Langsa, Langsa, Aceh, Indonesia

ⁱⁱFaculty of Sharia and Law, The State Islamic University of Ar-Raniry, Banda Aceh, Aceh, Indonesia

ⁱⁱⁱFaculty of Ushuluddin Adab and Da'wah (FUAD), The State Islamic University of Langsa, Langsa, Aceh, Indonesia

^{iv}Faculty of Agriculture, University of Syiah Kuala, Banda Aceh, Aceh, Indonesia

^vFaculty of Tarbiyah and Teacher Training, The State Islamic University of Ar-Raniry, Banda Aceh, Aceh, Indonesia

*(Corresponding author) e-mail: muhammaddnasir@iainlangsa.ac.id

Article history:

Submission date: 30 October 2023
Received in revised form: 22 March 2024
Acceptance date: 27 March 2024
Available online: 31 August 2024

Keywords:

Unilaterally divorce, traditional family law, modern family law, court

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:

Nasir, M., Roslaili, Y., Suparwany, Khathir, R., Idris, A., Anzaikhan, M. (2024). Legal status and consequences of unilateral divorce: Comparative studies between Egypt, Jordan, Tunisia and Indonesia. *Malaysian Journal of Syariah and Law*, 12(2), 456-470.
<https://doi.org/10.33102/mjssl.vol12no2.614>



© The authors (2024). This is an Open Access article distributed under the terms of the Creative Commons Attribution (CC BY NC) (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited. For commercial re-use, please contact penerbit@usim.edu.my.

ABSTRACT

Unilateral divorce by the husband outside the court requires attention in order to protect the women and children involved. This study was conducted to find out how the evolution of traditional family law to modern family law is taking place in four countries, namely Egypt, Jordan, Tunisia and Indonesia. This qualitative study employs documentary and comparative methods as research methodology. The results of this study show that there are differences in the laws and regulations of Islamic family law in these countries. A divorce forced by the husband is unilaterally recognized as valid in Egypt, Jordan and Tunisia, while in Indonesia the wife can contest the divorce or have it contested. Egypt and Tunisia impose criminal sanctions on husbands who do not fulfil their obligation to pay maintenance and housing to their ex-wives, while Indonesia and Jordan do not impose criminal sanctions. The criminal sanctions imposed in Egypt and Tunisia consist of the payment of a certain number of fines or imprisonment for a certain period of time. In Jordan, on the other hand, divorce can be prosecuted without notification to the competent authorities. The best implementation of family law with regard to unilateral divorce is therefore found in Tunisia. The academic contribution of this study to family law worldwide is that it offers the most ideal approach to protecting the often neglected rights of wives and children.

Introduction

Almost all Islamic countries have implemented reforms in the area of family law since the beginning of the 20th century. According to Wati et al., (2023), there are three types of family law in Islamic countries, namely the retention of traditional family law, the secularization of family law and the reformation of family law. Egypt, Jordan, Tunisia and Indonesia are among the third typologies that reform family law through new thoughts. These new thoughts are usually expressed in the form of formal legislation such as fatwas issued by scholars and court rulings and are rarely reflected in the books of jurisprudence. These three types of reforms can be seen in Figure 1:

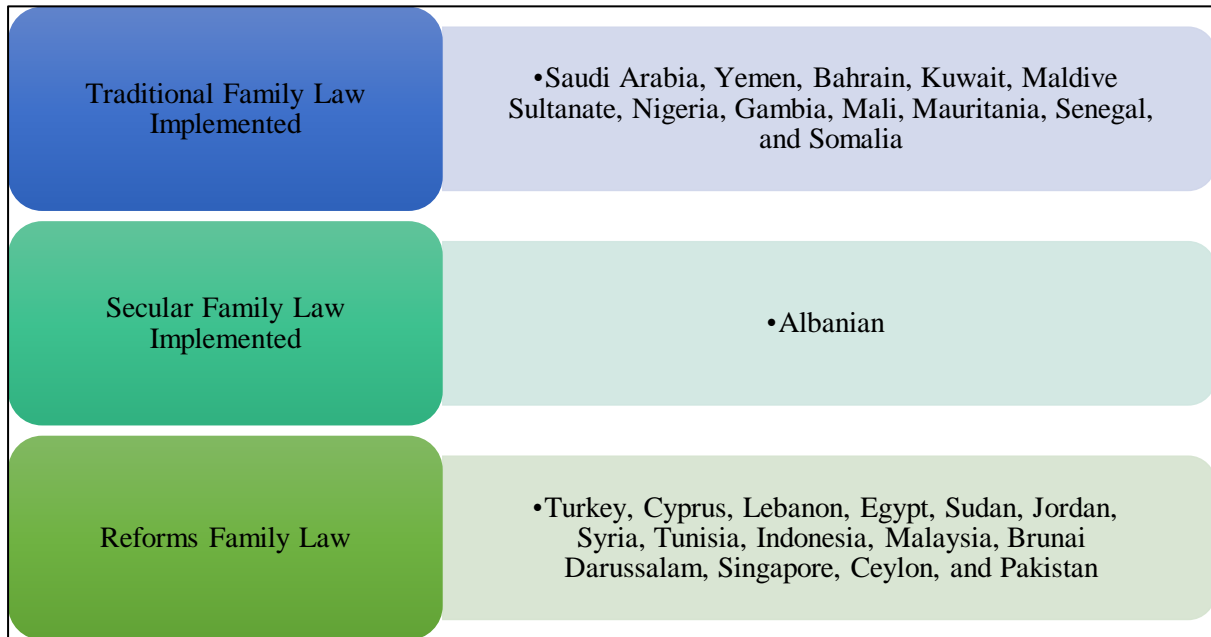


Figure 1. The countries with three typologies of family law implementation

The first typology is described as the country that is not at all willing to reform the traditional family law as stated in the books of jurisprudence and the adopted *madzhab*; the second typology is the country that adopts the European civil law; and the third typology is the country that reforms the family law (Livermore et al., 1890).

Almost all Islamic countries have the rule that divorce must be pronounced before the judge or at least recorded by the competent authorities. In some countries, divorce can be unilaterally enforced by the husband, but there are general consequences that the ex-husband has to bear towards the ex-wife. In contrast, in classical jurisprudence, the so-called traditional Islamic family law, divorce is said to be an absolute right that belongs to the husband and can be annulled anytime and anywhere, even without cause and without jest (Ahmad, F., 2003; Kasim & Semiaji, 2022). This understanding is often misinterpreted and misused, leading to the suffering of the ex-wife and children. The reforms carried out by Islamic countries against this traditional Islamic family law have resulted in different legal products depending on the reform methods applied.

Hasbi and Hasbi (2016) have clarified that the method of renewal of Islamic law can be categorized into four types:

- (1) The intra-doctrinal (by adopting the teachings of various *madzhabs*);
- (2) The extra-doctrinal (under the evidence based on the basic principles of Islamic law, adopting provisions that exist outside Islamic law);
- (3) The regulatory (creating new provisions that regulate or administer); and
- (4) The codifications (inviting some provisions of traditional Islamic law without changes).

There are six steps that have been taken by legislators in various Islamic countries to solve the problem of unilateral divorce:

- (1) Judicial intervention against the husband, such as the obligation to apply for a divorce permit supported by valid reasons;
- (2) Administrative intervention regarding the timing of applying for divorce;
- (3) Indirect restriction of certain conditions that do not have legal consequences of divorce, such as being in a drunken state, being in a state of drunkenness, and being in a state of sexual intercourse. Such as being drunk, using metaphorical words or jokes, dropping as a threat or appeal, and provocation;
- (4) Abolishing the three divorces at once;
- (5) Supporting reconciliation between divorcing spouses; and
- (6) Imposing a fine on the ex-spouse. The example of the fine is implemented in Egypt Law No. 100 of 1985 Article 18A, Jordan Law No. 25 of 1977 Article 134, Tunisia Law No. 7 of 1981 Article 31 (2).

The aim of this study is to discuss the legal status and consequences of divorce unilaterally enforced by the husband in the modern Islamic family law - in four countries, namely Egypt, Jordan, Tunisia, and Indonesia. This study is a qualitative in nature using combined doctrinal research approach and comparative method. The methodology used is a comparative law study between several countries that apply Islamic family law. The primary sources in this study are regulations or laws that contain Islamic family law. The secondary sources are academic articles that have been published recently, especially in the last five years. In obtaining credible data, the author exercises due diligence and checks the validity of the data by filtering and presenting the relevant data. In addition, when processing the raw data sources into draft articles, the author separates themes so that it can be presented in an easier and understandable way.

Literature Review

Divorce in Traditional Islamic Family Law

In Islam, divorce is the last resort that the husband takes to end the domestic problem. This concept of divorce has been around since pre-Islamic times, but in practise the incident is often pursued because the husband could refer during the period of *iddah* without limiting the number of repetitions. To solve this problem, Prophet Muhammad SAW accepted the revelation of Allah S.W.T which states that divorce is permissible twice (Surah Al-Baqarah, 2:229). The phenomenon of divorce in traditional family law results in women being powerless to the behaviour of an arbitrary husband. A husband can divorce her even if she does not actually want to break the marital bonds.

Divorce occurs when the husband has uttered the word “I divorce you”, no matter the circumstances, such as when drunk, joking, swearing and so on. This concept is so discriminatory that it needs to be renewed (Devy et al., 2021). Etymologically, divorce means the breaking of ties. In terminology, divorce means the severing of the bonds of marriage. The legal scholars have different definitions of divorce. According to the Hanafi and Hanbali scholars, divorce is the severance of the marital bonds in certain words as a direct case or an indirect case. The “direct case” *-bain kubra* divorce- means that the divorce becomes effective immediately after its pronouncement. The “indirect case” *-bain sughra* divorce- is that the divorce was not completed during the period of *iddah* (Athief & Juwanti, 2020). The Shafi’i *madzhab* states that divorce is the dissolution of the marriage contract with certain words in both direct and indirect cases. For the Maliki *madzhab*, divorce is the dissolution of the marriage contract, which results in the loss of the right to sexual intercourse between husband and wife.

In his book *Al-Muhadzab Fi Fihi Imam As-Shafii*, Abu Ishaq Ibrahim (1995) defines *talaq* as the annulment of the marriage vow with the word *talaq* and something else. Imam Taqiyuddin Abu Bakar (2002) in his book *Kifayatul Akhyar Fi Halli Ghayatil Ikhtishar* has presented the definition of *talaq* with the term for breaking the marriage bond. Al-Jaziri (1996), in *Kitab al-Fiqh 'Ala Madzahibil Arba'ah*, defines *talaq* as the breaking of the marriage bond or the reduction of the bond through the use of certain words.

Talaq derives from the word *ta-la-qa* with the form *masdar* with the meaning of *itlaq*, meaning to let go or leave. *Talaq* literally means to release an animal. This word is used in Islamic law to denote a legal way to end a marriage. In this case, it means that *talaq* is used to break or end the bonds of marriage. Furthermore, Sayyid Sabiq in his book *Fiqhus Sunnah* defines *talaq* as the severing of the marriage bond and the termination of the marital relationship (al-Jaziri, 1996). Abu Ishaq Ibrahim (1995), in his book *Al-Muhadzab Fi Fihi Imam As-Shafi'i*, defines *talaq* as the annulment of the marriage contract with the word *talaq* and the like.

The legal scholars have different views in the case of *bain sughra* divorce. According to Hanafi and Hanbali, this type of divorce is not annulled by the effect of divorce before the expiry of the *iddah* period. The husband could have sexual intercourse with his wife, which would automatically annul the divorce. However, the Maliki *madzhab* suggested that the husband should declare his intention to retire before coming to his wife.

According to Shafi’i *madzhab*, the ex-husband should not come to his ex-wife during the *iddah* period to socialise with her, and this cannot be used as a sign of remittance. Annulment of divorce should be done by using certain words clearly according to the intention (Azis, 2023). Certain words that can be used in annulment of divorce are clearly marked (*sarih*); the terms *khulu'* in the judge’s verdict are categorised as *sarih*. In Islamic law, divorce is permissible, especially if the relationship between husband and wife is no longer harmonious (Nuroniyah, 2020).

Divorce is an absolute right of the husband. Islam stipulates that divorce is an absolute right of the husband because the husband is the leader and is fully responsible for all aspects of domestic life such as living expenses, shelter, education, and supervision. Moreover, the husband had paid the dowry at the time of marriage. Psychologically, a husband is also more patient and can control his emotions better than a wife.

According to classical legal scholars, the husband has two characteristics: he applies more proportionality in divorce and is responsible for the material consequences of divorce, such as the fulfilment of the dowry debt, the cost of living for the wife, the cost of the children and the *mut'ah* (Kusmayanti et al., 2021). The wife is not materially harmed by the divorce. Therefore, it is considered fair and reasonable if the right to divorce is unconditionally granted to the husband. However, according to Islamic literature, the wife has the right to make a divorce agreement with certain conditions at the beginning of the marriage contract (*khulu'*) as well as the right to petition the court for divorce (*fasakh*).

According to Hanafi scholars, the pillar of divorce is the presence of divorce words that are clearly pronounced by the husband, while the rest includes the conditions for divorce. The conditions for divorce are as follows (Sukur & Shobahah, 2021):

- (1) The husband must be capable, adult and conscious;
- (2) There is an act pronouncing the divorce;
- (3) The existence of a wife; and
- (4) The existence of divorce words to dissolve the marriage contract.

Divorce imposed by the husband under a sentimental condition (amounting to insanity) is not valid. Accordingly, the majority of the scholars of Hanafi such as Abu Yusuf, Zufar bin Huzai, Abu Al-Hasan al Karakhi, Abu Ja'far al-Takhawi, al-Laits, Umar ibn Abdul Aziz and the scholars of Zhahiri argue that a divorce pronounced by the husband in a drunken state is not valid, as he is not legally competent when he is drunk. However, most scholars are of the opinion that divorce from a drunk husband is valid because he drinks alcohol while conscious and later becomes drunk. Forced divorce, on the other hand, is invalid because he loses his freedom and has no intention of doing so.

All ulama' agree that *mukallaf* is a legal condition for the *talaq*, and especially that the husband who utter the *talaq* is not in a state of compulsion (*ikrah*). Therefore, a *khilaf* occurs among the ulama' if there is a deficiency in the husband's *mukallaf*, meaning the husband is compelled/forced to perform *talaq* (*ikrah*), the husband is drunk (*sakr*), the husband is angry (*ghadhab*), then *talaq* is invalid (al-Jaziri, 1996). In the opinion of most scholars, a divorce can also be granted without the intention of pronouncing a divorce. Therefore, divorce pronounced by jest is considered valid and has legal consequences (Sunan Abi Daud, 1994, Hadith No. 1875).

The scholars of Hanafi, Maliki, Shafi'i and Hanbali agree that no witness is required in a divorce, as it is the absolute right of the husband. In contrast, contemporary legal scholars such as Abu Zahrah, Ali Hasballah, Al-Khafif, Musthafa Ahmad Zarqa' and Sayyid Sabiq are of the opinion that the witness in divorce is logical as a counterbalance to the marriage contract. About two male witnesses, as required in the marriage contract, are also necessary in divorce. Moreover, the existence of witnesses in divorce is to prevent the arbitrariness of the husband and to protect the rights of the wife (Faisal et al., 2021; Wan Ismail, W. A. F., et al., 2021).

During the *iddah* period after divorce, the husband is still obliged to provide for the wife's livelihood, including food, clothing, and housing, as the wife is still considered a wife. The *iddah* period is very important to ensure the condition of the wife's pregnancy. Hanafi scholars argue that the husband must provide for the wife's sustenance as the wife is not yet free during the *iddah* period. The Shafi'i and Maliki scholars argue in agreement with the Hanafi scholars, but only for the house, not for food and clothing (Islam, 2017). In contrast, Hanbali scholars argue that the husband is not obligated to provide for his wife's livelihood during *iddah*. Ibn Abi Zunad explained that *mut'ah* is not obligatory for the wife but is only a mercy granted by Allah S.W.T..

At present, the provisions on the legal status, conditions, and consequences of unilateral divorce in traditional Islamic family law are almost constant with few changes. The dominance of male authority over women in the case of divorce is very evident and there are unclear criteria for the compensation that must be granted to the wife (Anggraeni & Gofar, 2019). Actually, divorce is a linear consequence of the marriage contract that can affect anyone. It seems that traditional Islamic law has not been implemented precisely. This can be seen in the increase in lawsuits filed by the wife against unilateral divorce by the husband. This means that *fiqh* is the least dynamic in dealing with developments in Islamic family law literature.

The discussion about legal status and unilateral divorce outside marriage is not a new phenomenon; there are already several scholars writing about it. Nurhadi (2019) in his work titled: “*Perceraian di Bawah Tangan Perspektif Hukum Islam dan Hukum Indonesia*” has done a very good and measurable research on divorce. He also compared the position of divorce in the perspective of Islamic law and Indonesian law (Nurhadi, 2019). Although there are similarities in the context of divorce, Nurhadi's research only deals with the territory of Indonesia.

In a study entitled: “*Perlindungan Hukum Terhadap Korban Perceraian di Luar Pengadilan (Suatu Penelitian di Kota Langsa Provinsi Aceh)*”, Muhammad Nur et al., (2019) have presented in a very structured way how important legal protection is for divorce victims, especially for wives and children. This research again highlights that efforts to facilitate divorce should not be taken as an excuse, because often the rights of children and wives are neglected, and once that has happened, it will be difficult to sue again. Although both examined the importance of the rights of wives and children, Muhammad Nur's study only addressed local phenomena and does not compare family laws in different countries.

Dahlia has published her work on divorce in Indonesia and Malaysia in the study titled: “The construction of *cerai manis* (preferential divorce) on the border between Indonesian and Malaysian communities”. One interesting thing that can be seen in this study is how divorce is carried out peacefully and familiarly (Ma’u et al., 2023). While this term has similarities with the term divorce under the hand, it still has significant differences. One of these is the consequences that divorce entails.

In their article entitled “*Perbandingan Penerapan Hukum Keluarga di Mesir dan di Indonesia*”, Andi Harmim and Ahmad Faisal (2022) have very systematically described how the implementation of family law in Indonesia and Egypt. Through this article, the reader can understand what the role of the government in the implementation of Islamic law looks like when viewed in its moderate intensity. However, this article focuses only on the application of family law in general. While it also discusses marriages of convenience, it does not specifically address what the legal consequences are. After reviewing and exploring related research, not a single work was found that discusses the consequences this divorce especially not in a serious and coherent comparison of four countries.

Legal Status and Consequences

The divorce proceedings vary greatly from country to country. As far as the legal status of divorce is concerned, Tunisia openly rejects out-of-court divorce. The other three countries still consider it legal, but Indonesia still allows appeals. As far as the requirements for *talaq* are concerned, Tunisia seems to set more complex conditions. It is followed by Egypt, Indonesia and Jordan. In addition, Tunisia grants more compensation rights to mobbed wives than Egypt and Jordan, while Indonesia offers the least compensation. The most important step in extrajudicial divorce is the absolute right of the husband to pronounce the divorce. The four countries express different views on the rejection of this absolutism.

Tunisia seems to take a pioneering role by stating that the legality of the divorce depends on the decision of the court and not on the husband. In Indonesia, too, *talaq* is not automatically recognized out of court. Even if the court has granted the divorce, there is still the possibility of appeal. In contrast, Egypt and Jordan consider extrajudicial divorce to be legal. As far as administrative intervention is concerned, Tunisia has set more complex conditions compared to the other three countries. It is followed by Indonesia, Egypt and Jordan. Tunisia, on the other hand, seems to be more serious when it comes to the severity of the implementation of the regulations. This is shown by the fact that there are prison sentences and fines for violations, followed by Egypt and Jordan. As for Indonesia, it seems that it has not classified the violation as a criminal act (Tunisia, Egypt, Jordan, Indonesia).

Egypt

Almost 90% of the Egyptian population are Muslims. The extent of religious tolerance is a feature of traditional Egyptian culture, and religious freedom is guaranteed by the Egyptian constitution of 1971 (Harmim & Ahmad Faisal, 2022). The early history of family law reform in Egypt began around 1920, the last stage of the entire series of reforms of Egyptian constitutional law. Prior to this, although a draft law on personal status based on the Hanafi *madzhab* and the Wakaf Act, neither was ever enacted, so they had no binding legal force.

In 1920, the first series of laws on family law, personal status and livelihood came into force. In 1929, the second series of the Personal Status Act was re-enacted, repealing several articles of the previous law and introducing some new articles. Both series of the Personal Status Act are based on the selection of different rules that existed in the traditional Islamic family law of different *madzhabs* and were amended and supplemented twice, in 1979 and 1985.

As for unilateral divorce in Egypt, since December 1985, Egypt has enacted Law No. 100 of 1985, which is the second amendment to the two old personal status laws, Law No. 25 of 1920 and Law No. 25 of 1929. Law No. 100 of 1985 not only adopted and enforced the 1979 amendment but also introduced new rules (Mu'in & Hendriyadi, 2020). There are some important things that have been introduced in relation to the husband's power to unilaterally refuse the divorce, such as the need to record the divorce with an authorised official and formally serve it to the wife, as well as the husband's obligation to pay maintenance to the wife who unilaterally refuses for at least two years, as compensation and in addition for the wife's living expenses during the *iddah* period.

The above two provisions are stipulated and described in Articles 5A, 18A and 23A of Law No. 100 of 1985 as follows:

- (1) First, a husband who divorces his wife must obtain a certificate of divorce within thirty days from the date of the divorce decree. If the repudiated wife appears at the time of notarization, her knowledge of the divorce is acknowledged. However, if the wife does not show up, the registrar will inform the wife of the divorce through a special official and provide her with a copy of the divorce certificate. Every divorce is valid from the date it is pronounced, unless the husband keeps it secret from the wife. In the meantime, inheritance and financial rights take effect after the wife has learned of it (Article 5A).
- (2) Secondly, a wife who has been consumed in her lawful marriage, repudiated by her husband without his consent and through no fault of the wife, has the right to an additional livelihood for the period of *iddah*, the fulfilment of livelihood for at least two years by way of *mut'ah*, taking into account the economic condition of the husband, the condition of the repudiated wife and the duration of her marriage. The husband is granted the right to pay the *mut'ah* in instalments (Article 18A).
- (3) Thirdly, a person who divorces in violation of the provisions of Article 5A of this law shall be punished with up to 6 months or a fine of 200 Egyptian pounds or both. The same applies to a person who gives false information to the registrar regarding the status of the wife, the address of the wife, the wives or the wives who have been repudiated, in violation of the provisions of Article 11A (Article 23A).

It is clear from these articles that the legal status of a unilaterally pronounced divorce is valid under the Egyptian Personal Status Law, although there are provisions regarding the record and the compensation that the husband must pay to the divorced wife (Zayyadi, 2023). This provision is intended to limit the arbitrariness of the husband towards the wife in matters of divorce, where in the old Personal Status Law, the husband still had this freedom. Article 23A regulates the penalties for violations of the law of Article 5A is one of the additional article amendments of 1985.

Jordan

According to historical records, the modern state of Jordan came into being in 1921 as the Transjordanian Emirate. Since the collapse of the Ottoman dynasty in 1918, Jordan was under British protectorate and gained its independence as the Jordanian Hashemite Kingdom in 1946. The majority of Jordanians at the beginning of the 20th century were small farmers and traders who lived in villages and were generally followers of the Hanafi madhhab (Bunyamin, 2019). Until 1951, the Ottoman-Turkish Family Law was still in force in Jordan, until the enactment of the Family Rights Act No. 92 of 1951, which regulates marriage, divorce, dowry, reimbursement of expenses for wives and families, and child support, and repeals the provisions of the Ottoman-Turkish Family Law.

The Family Rights Act of 1951 was replaced by the Jordanian Personal Status Act of 1976 (Law No. 61 of 1976), called *Qanun al-Ahwal al-Shahsiyah*, which covers family rights including the provision of property and inheritance. The law consists of 187 articles divided into 19 chapters, including marriage and betrothal, marital guardianship, marriage contracts, *kafa'ah*, marriage prohibitions, marriages, consequences of marriage, dowry, wife's *nafaqah*, general principles on divorce, *'iddah*, paternity, circumcision, child rearing, family expenses, general principles regarding missing persons, and inheritance in general and annulment rules (Fathullah & Abduh, 2022). This rule mostly adheres to the Hanafi *madzhab*. But the articles on divorce and its legal consequences in this law cannot be applied, so an amendment was made to the article in 1977.

As for unilateral divorce in Jordan, there are some important provisions related to unilateral divorce, namely the obligation to record the divorce and the provision that a wife who divorces unilaterally must live for one year as compensation. The decree falls under Article 101 and Article 134 of Law No. 25 of 1977, which states:

- (1) First, the husband must submit his divorce to the judge. If the husband has psychologically abused his wife outside the court and he does not put this on record within 15 days, he must come to the Shariah court to put his divorce on record. Violations of this provision may be punishable by criminal penalties under the Jordanian Penal Code.
- (2) Secondly, if a husband has unilaterally and without just cause emotionally abused his wife, the wife may apply to the court for compensation, although the court may grant her application a maximum of one year's living expenses in addition to the *iddah*. The husband can apply for payment in instalments according to the economic condition.

Tunisia

Tunisia is one of the Islamic countries in the Maghreb region, which is dominated by the Muslim followers of the Maliki *madzhab*. Since the *Shi'ah Fatimiah* dynasty ruled the country in the tenth century, there has been a minority of *Shi'ah* followers to this day. In addition, the Hanafis, who formed a small minority in Tunisia, had great influence in the country until the French protectorate (Komarudin, 2019). The family law in force in Tunisia is the Personal Status Act 1956. The first president Habib Bourguiba achieved a breakthrough with the introduction of a Personal Status Act to replace the Traditional Family Law in the areas of marriage, divorce and child rearing. He also banned polygamy and imposed legal sanctions on those involved.

According to Charrad (2012), legal reform in Tunisia took place in two phases:

- (1) The first phase was the adoption of the Tunisian Personal Status Code (CPS) in 1956 to modernize the country. It transforms the meaning of Tunisian family relations by reducing patrilineal kinship and expanding women's rights, particularly in the areas of marriage, divorce, custody, and inheritance, as well as abolishing polygamy in favor of the law.

- (2) The second phase was the reforms of 1993 under the government of President Ben Ali. During this phase, women's organizations emerged, and the issue of women became a topic of public debate. A 1993 reform gave Tunisian women the right to pass on their citizenship to their children born outside Tunisia, regardless of the nationality of the child's father.

Morocco, on the other hand, took the needs of women into account in the 1957-1958 Mudawwana Personal Status Code. In the Mudawwana of the 1950s, women generally had little power; guardianship and supervision of fathers, husbands and brothers were applied in many cases. In 2004, there was a corresponding Mudawwana reform and women were given more comprehensive rights and protections in line with international human rights standards. However, the implementation and socialization process still face many obstacles (Charrad, 2012).

With regard to unilateral divorce in Tunisia, since the introduction of the 1956 Personal Status Act, Tunisia has abolished the institution of extrajudicial divorce and introduced new rules for divorce prior to legal proceedings. This clause is enshrined in Article 30. In a further development in the 1981 blockade, Tunisia introduced new rules on the rights of violated wives, set out in Article 31. It also introduced new rules for sanctions for violations of the provisions of Article 31, which are set out in Article 53A.

- (1) First, there shall be no divorce unless there is a court hearing.
- (2) Second, divorce is pronounced on condition that: Agreement of the parties (spouses), there is fault on one side, such as an injury. The husband insists on his wife's mentality, or the wife insists on asking for a divorce.
- (3) Third, for women who are compensated after the *iddah* period expires in the form of money, or it may be in the form of granting permanent property rights to the shared home. The grant of this compensation is reviewed, may be increased or decreased in value depending on whether the wife has lost her grief or whether she has remarried (Mamnuniyatilah & Andaryuni, 2022).

If the first ex-husband dies, the compensation is taken from the inheritance of the wife's share if the heir agrees. If this is not the case, the amount of compensation is determined by the court. The heir may pay the compensation in instalments within one year of the previous husband's death, and the ex-wife may be required to pay the compensation (Article 31).

- (4) Fourthly, anyone who is ordered to pay maintenance or compensation under Articles 31 and 32 and wilfully fails to pay is liable to a prison sentence of 3 to 12 months and a fine of 100 to 1000 dinars (Article 53A).

According to these articles, husband and wife have the same right to a divorce, but it must be finalised in court, and each party has the right to sue for damages (Muhajir, 2021). This law also pays more attention to the wife by providing for compensation in the form of money or in the form of permanent property for the shared home. The amount of compensation for the wife depends on the extent of the grief and the status of her marriage. In addition, the court plays an important role in deciding whether to accept or reject the divorce, the amount of compensation, the enforcement of the compensation and the punishment of those who have violated this law.

Indonesia

Indonesia is the country with the largest Muslim population in the world, the majority of whom belong to the Shafi'i *madzhab*. Muslims in Indonesia have a unique family system that has evolved from a combination of Islamic law and customary law. The history of family law legislation in Indonesia can be divided into three periods: Pre-Colonial Period, Colonial Period and Post-Independence Period. Under the rule of the Dutch and the Japanese, family law in Indonesia was a customary law that was modified by Islamic law. It was regulated by religious courts since 1882 (Nurlaelawati, 2020). In 1929, the Muslim Marriage Ordinance was issued, which only applies to Java and Madura. In 1946, Indonesia issued regulations for recording marriages and divorces. Since the 1950s, Indonesia has attempted to draft a comprehensive and enforceable marriage law for all citizens.

However, these efforts were delayed as there were many obstacles and challenges, especially from traditional Muslims. Finally, the government introduced Law No. 1 of 1974 on Marriage, which has been in force since October 1, 1975. This law consists of 14 chapters and 67 articles. This law was followed by Government Regulation (PP) No. 9 of 1975. In support of this law, the Minister of Religious Affairs published Regulations No. 3 of 1975 and No. 4 of 1975. In 1989, Law No. 7 was published to supplement the regulation on family law, including inheritance law, wills and *waqaf*. Finally, the Minister of Religious Affairs published an Ordinance No. 2 of 1990.

One year later, the Compilation of Islamic Law in Indonesia (Kompilasi Hukum Islam-KHI) concerning marriage, inheritance and courtesy was introduced by Presidential Instruction No. 1 of 1991. This regulation was followed by the Decree of the Minister of Religious Affairs No. 154 of 1991. The content of the Compilation of Islamic Law in Indonesia consists of three books: Book I on Marriage Law, Book II on Inheritance Law and Book III on *Waqaf*. The content of Book I on Marriage law consists of 19 chapters and 170 subchapters (Mistiar, 2022).

In Indonesian family law, the intervention of the court is required in every divorce case. Any spouse who wishes to divorce must go through the judicial process by filing for divorce with the competent court (Ulumuddin et al., 2021). Every divorce petition must be sufficiently substantiated (Hariati, 2023). There is no condition that allows the husband to divorce unless the court considering the case gives its approval. The wife has the right of appeal against the court's decision to allow the husband to divorce. Any wife who is divorced by her husband is entitled to maintenance, clothing, and adequate accommodation during *iddah*. She can also file a suit for the division of half of the joint property, unless the agreement provides otherwise (Limbong et al., 2023).

Comparative Analysis

In general, the comparison between these countries can be viewed from Table 1. First, the socio-political background. The socio-political background of countries affected the legal status of their laws and regulations. In Egypt, for example, during Sadat's 11-year rule, there were at least some quite fundamental and important changes that were directly related to socio-political life, such as the amendment of the country's constitution and party system. Sadat's efforts to make the Holy Qur'an the main source of legislation on the one hand, and to protect the rights of mothers and child rearing on the other, encouraged the change in divorce regulation (Al-Tkhayneh & Nser, 2019).

Table 1. Types of the limitation of unilateral divorce

No	Procedure	Egypt	Jordan	Tunisia	Indonesia
1	Court intervention		/	/	/
2	Administrative intervention				/
3	Annulment of three divorces at once	/	/	/	/
4	Refusal of divorce without circumstances	/	/		
5	Proposal for reconciliation			/	/
6	Obligation to pay	/	/	/	

These efforts were even pushed by Oleg Jihan, Saddat's wife, who wanted to fight for the limited protection of wives. In the early 1980s, the renewal efforts remained present in Egyptian society. They were even supported by prominent jurists such as Thariq al-Bisr and Husein Amin. They want to assert the role of Islam in public life and emphasize the need to interpret Islam today in the light of new social conditions. In Jordan, also a former British protectorate, there was a similar pattern of reform as in Egypt.

The most radical reform efforts were undertaken by Tunisia. As a former French colony, Tunisia was actually the first country in the Middle East to introduce some ideas on reforming Islamic family law that are completely different and intertwined with the book of *fiqh*. It was influenced by the socio-political conditions of the time in which the government sought secularization and weakened the position of jurists by separating them from independent material sources and placing them under the control of the government (Hasbi & Hasbi, 2016).

Indonesia, on the other hand, has a unique socio-political background. As a former Dutch colony that established “the policy of recognized or conforming to the prevailing customary law of Islamic law”, the country has become accustomed to the application of Islamic law that struggles with customary law. In addition, it has also experienced the policy of legal discrimination by the Dutch colonialists. When the government began to enforce the policy of national law, the renewal of marriage law began, which could be put into effect with Law No. 1 of 1974.

In order to meet the need for comprehensive substantive law in religious justice on the one hand and to enforce the Suharto government's policy of “conquering the hearts of Muslims” on the other, the Compilation of Islamic Law. As Khoiruddin Nasution has explained in detail, the emergence of marriage legislation in Indonesia is also due to the demand of some organizations, especially women's organizations (Fadhilah, 2021). It is therefore not surprising that there are pro and con arguments on this issue.

The Islamic mass organizations in Indonesia also play a role in the dynamics of Islamic law. *Nahdatul Ulama* and *Muhammadiyah*, for example, although both have different gestures, always contribute to people's problems. The most frequently raised issues on Islamic family law are how a woman becomes a leader or a member of the legislature. On the one hand, she is both a wife and a mother. Of course, the moderate concepts offered by the above-mentioned mass organizations are very important for the upbringing of their group. In addition, each of these organizations has an internal organization that deals specifically with the laws for women (Nofialdi, 2019). In *Muhammadiyah* there is the term '*Asyiyah*' and in *Nahdatul Ulama* there is *Muslimat NU*. In other Islamic organizations such as HMI, there is also an autonomous group (*Kohati*) that responds to the developments in the field of women's issues.

Secondly, the method of renewal. The four countries mentioned above have reformed the rules for divorce that existed in traditional family law. These countries have enacted very strict regulations, such as the obligation to file a divorce with an authorized official and officially notify the wife, the requirement to pronounce the divorce in court, the payment of compensation to the wife in addition to living expenses during the *iddah* period, and the penalties for violating the regulations (Egypt and Tunisia). However, Indonesia does not recognize unilateral divorce, as the divorce must be based on sufficient grounds according to the judge's decision.

The efforts to restrict the power of husbands to divorce in these countries can be categorized into six types of restriction, namely through judicial intervention (Jordan, Tunisia and Indonesia), administrative intervention (Indonesia), the abolition of three divorces at once (Egypt, Jordan, Tunisia and Indonesia), by indirect prohibitions, such as unrecognized divorce pronounced while drunk, under duress, as a threat or using metaphors (Egypt and Jordan), by extending the possibility of reconciliation (Tunisia and Indonesia) and by obligations to pay compensation (Egypt, Tunisia and Jordan).

Tunisia has made progress in reforming its women's laws. In Tunisia, there are three main problems with regard to women's rights. First, women who divorce and then remarry can lose custody of their children, which is then taken away from them; second, the law does not provide maximum protection against domestic violence experienced by women; and finally, the issue of inheritance of *gono gini* property (Charrad, 2012).

Tunisia has also abolished one form of *talaq*, namely unilateral divorce with the husband's words without judicial intervention. Islamic reformers point out that some verses of the holy Quran emphasize the vagueness of divorce and the need to resort to arbitration in disputes between spouses (Bernadt & Kaplan, 1996). As for example:

In Morocco, the reforms were not as substantial as in Tunisia, as the courts did not change after the reforms were promulgated. Some judges who had previously applied the Sharia of the Maliki school needed more enthusiasm for the reforms. Similarly, many Moroccan women are only aware of the reform of their rights but have yet to learn the specifics of the rules related to their rights (Charrad, 2012).

The provisions of traditional Islamic family law explicitly state that divorce is an absolute right of the husband against his wife, which can be revoked at any time (except at the time of the monthly period) and anywhere, even without the consent, reason or fault of the wife. Apart from covering living expenses during the iddah period, the husband is not obliged to pay any compensation to the wife for the unilateral divorce (Komarudin, 2019).

In a comparison, the products of legislation in these countries do not show any significant differences. They all lead to efforts to restrict the case of unilateral divorce by the husband. This is rather due to the similarity of the methods of legal reform, namely the regulatory approach. From a dynamic perspective, change in these legislations seems to follow the diagonal, incremental pattern.

In Egypt, for example, unilateral divorce was initially allowed; in 1977, the regulation was changed to require the recording of the incident of unilateral divorce; and in 1985, the regulation was improved to require the husband to pay compensation to the wife in the form of one year's maintenance, with a prison sentence or fine for non-compliance.

In Jordan, unilateral divorce was allowed in the past, but today it must be done in court or on record and the husband must pay compensation. In Tunisia, unilateral divorce is allowed as a last option, but it must be done in court after the judge has examined the reason or failed to reconcile them. Then the husband is punished to pay compensation to the wife in the form of money or transfer property rights to the shared home, and wilful violation of the compensation payment is punishable by imprisonment and a fine.

Additionally, in Indonesia, the divorce is first duly notarized by the recognized acting but it should be executed in court, and the joint property can be divided into two halves unless there is another agreement. The division of joint ownership is a variation of common law.

Conclusion

This study makes an important contribution to the understanding of divorce in the Islamic world. All four countries, including Tunisia, Egypt, Indonesia and Jordan, express similar concerns regarding the adaptation of *talaq* and have moved away from traditional fiqh law. The adaptation is necessary because Muslim society needs to adjust to a rapidly changing atmosphere in the Muslim world. One of the changes is the abolition of the absolute right of the husband to declare *talaq* and the process of *talaq* must include the role of the state. Even though the *talaq* is still considered legal out of the court, several administrative procedures must be followed in all countries.

With the exception of the Tunisian government, which considers an out-of-court divorce to be unlawful. Indonesia accepts an out-of-court divorce, but still allows the possibility of appeal, even if the court has ruled that the divorce is valid. The same applies to other cases under Islamic civil law, such as joint property disputes, inheritance disputes and others, where there is an option to appeal to a higher court within a certain period of time if the parties are dissatisfied with the judge's decision.

As for compensation for wives after divorce, some countries, including Egypt, Jordan and Tunisia, have established a variety of compensation for divorced wives in addition to iddah income. While Tunisia provides a place to live and money, wives who are divorced in Egypt receive two years' compensation

and in Yemen only one year. These breakthroughs are unknown in the classical legal systems, the former system only recognises livelihood for the iddah period after the divorce. Nonetheless, all countries studied have established the requirement of *talaq* to be in court, although not all Muslim countries impose penalties for disobedience.

References

- Abu Bakr, T. (2002). *Kifayatul ahyar fi halli ghayatil ikhtrishar* (No. 1). Semarang: Putera Semarang.
- Ahmad, F. (2003). Understanding the Islamic law of divorce. *Journal of the Indian Law Institute*, 45(3/4), 484-508.
- Ali, A. I. I. (1995). *Al-Muhadzzab fi Fiqhi Imam As-Syafii*. Beirut: Daar Al-Kutub.
- Al-Jaziri, A. A. (1996). *Kitab al-Fiqh 'Ala Mazahib al-Arba'ah* (No. 1). Beirut: Daarul Kutub Al-'Ilmiyah.
- Al-Tkhayneh, K. M., & Nser, K. K. (2019). Emirati women's perceptions of polygamy according to age, employment, and educational level. *Humanities & Social Sciences Reviews*, 7(5), 911-916.
- Anggraeni, R. D., & Gofar, M. A. (2019). Perspektif kawin kontrak dalam hukum nasional dan hukum Islam beserta akibat hukun yang ditimbulkannya. *Mizan: Journal of Islamic Law*, 3(2), 227–238. <https://doi.org/10.32507/mizan.v3i2.491>
- Athief, F. H. N., & Juwanti, R. H. (2020). Court decisions on post-divorce children's livelihood: Islamic law analysis on their practices in Indonesia and Malaysia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 20(2), 151–173. <https://doi.org/10.18326/ijtihad.v20i2.151-173>
- Azis, A. (2023). Iddah for husbands: A political analysis of Islamic family law. *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, 10(1), 34–49. <https://doi.org/10.32505/qadha.v10i1.5905>
- Bunyamin, M. (2019). Pembaruan undang-undang perkawinan Yordania dan relevansinya terhadap pengembangan hukum perkawinan Islam modern. *ASAS; Jurnal Hukum Ekonomi Syariah*, 11(2), 51–76. <https://doi.org/10.24042/asas.v11i2.5597>
- Charrad, M. M. (2012). Family law reforms in the Arab world: Tunisia and Morocco. *Good Practices in Family Policy Making: Family Policy Development, Monitoring and Implementation: Lessons Learnt* (pp. 1–12). New York: Report for the United Nations Department of Economic and Social Affairs (UNDESA) Division for Social Policy and Development Expert Group Meeting.
- Devy, S., Bahri, S., Ariga, S., Ahmad, M. A., Budiman, M. B., & Wahyuni, Y. S. (2021). The role of witness as evidence in divorce cases at the Banda Aceh Syar'iyah Court. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5(2), 579–597. <https://doi.org/10.22373/sjkh.v5i2.10879>
- Fadhilah, F. (2021). Dispensasi kawin di Mahkamah Syar'iyah pasca lahirnya Perma No 5 Tahun 2019. *Shibghah: Journal of Muslim Societies*, 3(1), 64–83.
- Fahriyanti, N. (2023). The legal protection of children's rights due to parental divorce in Islamic family law in predominantly Muslim countries. *Jurnal Akta*, 10(1), 1–15. <http://dx.doi.org/10.30659/akta.v10i1.29822>
- Faisal, F., Isnaeni, A., Bahrudin, M., & Nasruddin, N. (2021). Marriage contract through visualization of online video call communication media according to marriage law and Islamic law in Indonesia. *SMART: Journal of Sharia, Tradition, and Modernity*, 1(1), 81–97. <https://doi.org/10.24042/smart.v1i1.9847>
- Fathullah, A., & Abduh, M. (2022). The relationship of children and their biological father: Comparative study of positive law of Indonesia, Thailand and Jordan. *Syariah: Jurnal Hukum Dan Pemikiran*, 22(2), 213–230. <https://doi.org/10.18592/sjhp.v22i2.8918>
- Hamim, A., & Faisal, A. (2022). Perbandingan penerapan hukum keluarga di Mesir dan di Indonesia. *AS-SYAMS*, 3(2), 118–128. <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/312>
- Hariati, S. (2023). Analisis Hukum Penyebab Terjadinya Perceraian Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam (Studi Di Pengadilan Agama Giri Menang, Lombok Barat). *Jurnal Kompilasi Hukum*, 8(1), 1–23. <https://doi.org/10.29303/jkh.v8i1.127>

- Hasbi, R., & Hasbi, S. (2016). The legality of divorce in the perspective of Hadith. *Jurnal Ushuluddin*, 24(1), 51–66. <https://doi.org/10.24014/jush.v24i1.1526>
- Islam, A. A. H. (2017). Kawin kontrak dalam perspektif tafsir Al-Mizan dan tafsir Al-Dur Al-Manthur. *Jurnal Al-Fath*, 11(1), 71–101. <https://doi.org/10.32678/alfath.v11i1.883>
- Kasim, N. M., & Semiaji, T. (2022). Divorce cases in members of Indonesian police force: A positive law perspective. *Jurnal Ilmiah Al-Syir'ah*, 20(1), 91–104. <https://doi.org/10.30984/jis.v20i1.1793>
- Komarudin, K. (2019). Hukum keluarga di Tunisia dan Indonesia. *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam*, 18(1), 194–225. <https://doi.org/10.15408/kordinat.v18i1.11481>
- Kusmayanti, H., Fakhriah, E. L., & Nugroho, B. D. (2021). The settlement of disputes regarding division of joint property after a divorce in the Central Aceh Regency. *Jurnal Ilmiah Islam Futura*, 21(2), 170–182. <https://doi.org/10.22373/jiif.v21i2.6599>
- Limbong, P. H., Siregar, S. A., & Yasid, M. (2023). Pengaturan hukum dalam pembagian harta bersama perkawinan menurut hukum perdata yang berlaku saat ini di Indonesia. *Jurnal Retentum*, 5(2), Article 2. <https://doi.org/10.46930/retentum.v5i2.1346>
- Livermore, M. A., Barr, A. E., Cooke, R. T., Phelps, E. S., & June, J. (1890). Women's views of divorce. *The North American Review*, 150(398), 110–135. <https://www.jstor.org/stable/25101927>
- Ma'u, D. H., Wagiyem, W., & Rahayu, R. M. (2023). The construction of cerai manis (preferred divorce) on the border of Indonesia and Malaysia communities. *Al-Adalah*, 20(1), 19–34. <https://doi.org/10.24042/adalah.v20i1.16518>
- Mamnuniyatilah, M., & Andaryuni, L. (2022). Hukum keluarga di Tunisia: Sebuah studi kepustakaan. *Jurnal Tana Mana*, 3(2), 217–226. <https://doi.org/10.33648/jtm.v3i2.321>
- Mistiari, W. (2022). Gagasan pemikiran pengaturan hukuman cambuk bagi pelaku nikah sirri dalam rancangan qanun Provinsi Aceh. *Humantech: Jurnal Ilmiah Multidisiplin Indonesia*, 2(3), 610–616. <https://doi.org/10.32670/ht.v2i3.1483>
- Mu'in, F., & Hendriyadi, H. (2020). Analisis perbandingan batas usia perkawinan di Mesir dan Indonesia. *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law*, 1(1). <https://doi.org/10.24042/el-izdiwaj.v1i1.7086>
- Muhajir, M. (2021). Reformasi hukum keluarga Islam Tunisia pasca Arab Spring: Antara liberalisme dan konservatisme. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 14(1), 26–39. <https://doi.org/10.14421/ahwal.2021.14103>
- Nur, M., Jauhari, I., & Yahya, A. (2019). Perlindungan hukum terhadap korban perceraian di luar pengadilan (Suatu penelitian di Kota Langsa Provinsi Aceh). *Jurnal Penelitian Hukum De Jure*, 19(4), 563–572. <https://doi.org/10.30641/dejure.2019.V19.563-572>
- Nurhadi, N. (2019). Perceraian di bawah tangan perspektif hukum Islam dan hukum Indonesia. *Al-Mawarid Jurnal Syariah dan Hukum (JSYH)*, 1(2), 179–201. <https://doi.org/10.20885/mawarid.vol1.iss2.art5>
- Nurlaelawati, E. (2020). Expansive legal interpretation and Muslim judges' approach to polygamy in Indonesia. *Hawwa*, 18(2–3), 295–324. <https://doi.org/10.1163/15692086-12341380>
- Nuroniyah, W. (2020). Cerai Lebe sebagai inisiatif lokal dalam upaya meminimalisir praktek perceraian liar (Studi kasus di Desa Cangkring Kabupaten Indramayu). *Al-Manahij: Jurnal Kajian Hukum Islam*, 14(1), 113–129. <https://doi.org/10.24090/mnh.v14i1.3739>
- Sukur, M., & Shobahah, N. (2021). Syiqaq sebagai alasan perceraian di Pengadilan Agama Tulungagung. *Ahkam: Jurnal Hukum Islam*, 9(1), 175–192. <https://doi.org/10.21274/ahkam.2021.9.1.175-192>
- Ulumuddin, T., Habibi, M., & Riyanton, R. (2021). Kesesuaian fiqh talak syi'ah imamiyyah dengan aturan perkawinan di Indonesia. *Asy-Syari'ah*, 23(2), 245–260. <https://doi.org/10.15575/as.v23i2.12109>
- Wan Ismail, W. A. F., Hashim, H., Mamat, Z., Abdul Mutalib, L., Baharuddin, A. S., & Jusof, N. (2021). Sumpah nafy al-'ilmi menurut undang-undang keterangan Islam di Malaysia: Nafy al-'ilmi oath according to Islamic Law of Evidence in Malaysia. *AL-MAQASID: The International Journal of Maqasid Studies and Advanced Islamic Research*, 2(2), 25–37. <https://doi.org/10.55265/almagasid.v2i2.11>

- Wati, E. D., Wahib, M., Faisal, & Harahap, A. A. (2023). Dimensi fikih moderat dalam putusan hakim atas perceraian yang disebabkan penyalahgunaan aplikasi karaoke online: Jurisprudensi. *Jurnal Ilmu Syariah, Perundangan-Undangan Dan Ekonomi Islam*, 15(1), 182–194. <https://doi.org/10.32505/jurisprudensi.v15i1.5613>
- Yusuf, A. I. I. (1995). *Al-Muhadzab Fi Fiqhi Imam As-Syafii*. Beirut: Daar Al-Kutub.
- Zayyadi, A. (2023). Kontribusi Turki dan Mesir terhadap sejarah pembaruan hukum keluarga Islam di Indonesia. *Al-Manhaj: Journal of Indonesian Islamic Family Law*, 2(1), 47–69. <http://dx.doi.org/10.19105/al-manhaj.v2i1.3115>